

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
AT KANSAS CITY

**JAMES FULTON** )  
432 N. Singletree Street )  
Olathe, KS 66061 )

and )

**BRANDON RUSSELL** )  
821 Saddlewood, Apt #D )  
Gardner, KS 66030 )

and )

Case No. 10-CV-2645 KHV/JPO

**ERIC J. WADKINS** )  
127 E. Park Street )  
Gardner, KS 66030 )

and )

**Jury Trial Demanded**

**JOHN BUCKNER** )  
1199 E. Santa Fe, Lot 50 )  
Gardner, KS 66030 )

and )

**MARK A. THEIS** )  
24405 Hospital Dr. )  
Paola, KS 66071 )

and )

**RANDY D. RUSSELL** )  
821 Saddlewood, Apt #D )  
Gardner, KS 66030 )

On Behalf of Themselves and )  
All Others Similarly Situated, )

Plaintiffs; )

vs. )

**TLC LAWN CARE, INC.** )  
A Kansas Corporation )  
Registered Agent: )  
DSD Service Corporation )  
11040 Oakmont )  
Overland Park, KS 66210 )

Defendant. )



**COMPLAINT**  
**Collective Action Claims**

**COMES NOW** the Plaintiffs, James Fulton, Brandon Russell, Eric Wadkins, John Buckner, Mark Theis, and Randy Russell on behalf of themselves, and all others similarly situated, by and through counsel, and hereby set forth their representative action for violation of the Fair Labor Standards Act under §216(b) as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action against Defendant TLC Lawn Care, Inc. (“Defendant”) for unpaid wages, and related penalties and damages. Defendant’s practice and policy is to willfully fail and refuse to properly pay Plaintiffs and all other similarly situated employees for all hours worked. Doing so is in direct violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*
2. Defendant’s practices are in direct violation of the FLSA and Plaintiffs seek compensation for unpaid wages; liquidated and/or other damages as permitted by applicable law; and attorneys’ fees, costs, and expenses incurred in this action.

**PARTIES**

3. Plaintiff James Fulton currently resides at 432 N. Singletree Street, Olathe, KS 66061. Plaintiff is employed as an hourly employee for the Defendant and works at Defendant’s place of business located in Kansas. Plaintiff James Fulton and all others similarly situated, for the purposes of this collective action, also work and/or worked at this location.
4. Plaintiff Brandon Russell currently resides at 821 Saddlewood, Apt #D, Gardner, KS 66030. Plaintiff is employed as an hourly employee for the Defendant and works at Defendant’s place of business located in Kansas. Plaintiff Brandon Russell and all others

similarly situated, for the purposes of this collective action, also work and/or worked at this location.

5. Plaintiff Eric Wadkins currently resides at 127 E. Park Street, Gardner, KS 66030. Plaintiff is employed as an hourly employee for the Defendant and works at Defendant's place of business located in Kansas. Plaintiff Eric Wadkins and all others similarly situated, for the purposes of this collective action, also work and/or worked at this location.
6. Plaintiff John Buckner currently resides at 1199 E, Santa Fe, Lot 50, Gardner, KS 66030. Plaintiff is employed as an hourly employee for the Defendant and works at Defendant's place of business located in Kansas. Plaintiff John Buckner and all others similarly situated, for the purposes of this collective action, also work and/or worked at this location.
7. Plaintiff Mark Theis currently resides at 24405 Hospital Drive, Paola, KS 66071. Plaintiff is employed as an hourly employee for the Defendant and works at Defendant's place of business located in Kansas. Plaintiff Mark Theis and all others similarly situated, for the purposes of this collective action, also work and/or worked at this location.
8. Plaintiff Randy Russell currently resides at 821 Saddlewood, Apt #D, Gardner, KS 66030. Plaintiff is employed as an hourly employee for the Defendant and works at Defendant's place of business located in Kansas. Plaintiff Brandon Russell and all others similarly situated, for the purposes of this collective action, also work and/or worked at this location.
9. Defendant is a Kansas Corporation registered and in good standing in the State of Kansas with its principle place of business located at 19600 W. 159<sup>th</sup> Street, Olathe, KS 66062

and may be served with process through its registered agent DSD Service Corporation, 11040 Oakmont, Overland Park, KS 66210.

**JURISDICTION AND VENUE**

10. This Court has original federal question jurisdiction under 28 U.S.C. § 1311 for the claims brought under the FLSA, 29 U.S.C. § 201, *et seq.*
11. The United States District Court for the District of Kansas has personal jurisdiction because Defendant conducts business in Johnson County, Kansas, located within this District.
12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as the Defendant has offices, conducts business and can be found in the District of Kansas, and the causes of action set forth herein have arisen and occurred in substantial part in the District of Kansas. Venue is also proper under 29 U.S.C. § 1132(e)(2) because Defendant has substantial business contacts within the State of Kansas.

**COUNT I**  
**FLSA CLAIM**

13. Plaintiff James Fulton has been employed by the Defendant since April 2010. During this time frame, Mr. Fulton performed work as an hourly employee for Defendant.
14. Plaintiff Brandon Russell has been employed by the Defendant since June 2010. During this time frame, Mr. Russell performed work as an hourly employee for Defendant.
15. Plaintiff Eric Wadkins has been employed by the Defendant since August 2010. During this time frame, Mr. Wadkins performed work as an hourly employee for Defendant.
16. Plaintiff John Buckner has been employed by the Defendant since June 2010. During this time frame, Mr. Buckner performed work as an hourly employee for Defendant.

17. Plaintiff Mark Theis has been employed by the Defendant since May 2010. During this time frame, Mr. Theis performed work as an hourly employee for Defendant.
18. Plaintiff Randy Russell has been employed by the Defendant since May 2010. During this time frame, Mr. Russell performed work as an hourly employee for Defendant.
19. Prior to and during the Plaintiffs' employment with the Defendant, the Defendant employed numerous other individuals who had the same job duties and compensation structure as the Plaintiffs. These other employees also worked at Defendant's Olathe, Kansas location as hourly employees (the putative representative action plaintiffs).
20. Plaintiffs bring this Complaint as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who were, are, or will be employed by the Defendant as hourly laborers within three years from the commencement of this action who have not been compensated for all hours for which they suffered or were permitted to work.
21. This Complaint may be brought and maintained as an "opt-in" collective action pursuant to Section 16 of the FLSA, 29 U.S.C. § 216(b), for all claims asserted by the Representative Plaintiffs because the claims of the Plaintiffs are similar to the claims of the putative plaintiffs of the representative action.
22. Plaintiffs and the putative representative action plaintiffs are similarly situated, have substantially similar pay provisions, and are subject to Defendant's common practice, policy, or plan of refusing to pay for all hours worked in violation of the FLSA.
23. The names and addresses of the putative members of the representative action are available from the Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

24. Through information and belief, at all times relevant herein, Defendant has had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).
25. The FLSA requires each covered employer to compensate all employees for all hours suffered or permitted to work.
26. At all relevant times, Defendant has had a policy and practice of failing and refusing to pay its hourly employees for all hours worked.
27. The Defendant failed to compensate Plaintiffs and all other similarly situated employees for all hours worked, and therefore, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*
28. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).
29. Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant, seek damages in the amount of all respective unpaid wages, plus liquidated damages, as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.
30. Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant, seek recovery of all attorney fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b).

**WHEREFORE**, Plaintiffs, on behalf of themselves and all proposed members of the FLSA representative action, pray for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action and permitting them to

assert timely FLSA claims in this action by filing individual Consents To Sue pursuant to U.S.C. § 216(b);

- b. Designation of Plaintiffs James Fulton, Brandon Russell, Eric Wadkins, John Buckner, Mark Theis and Randy Russell as Representative Plaintiffs of the putative members of the FLSA representative action;
- c. An award of damages for unpaid wages due for the Plaintiffs and the putative members of the class; and,
- d. Liquidated damages, to be paid by Defendant; or
- e. Pre-Judgment and Post-Judgment interest, as provided by law; and
- f. Costs and expenses of this action incurred herein, including reasonable attorneys fees and expert fees; and,
- g. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

**Demand for Jury Trial**

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they and all members of the proposed representative action have a right to jury trial.

**Designated Place of Trial**

COMES NOW the Plaintiffs by and through their counsel of record and hereby designate the place of trial as follows: **Kansas City, Kansas.**

Respectfully submitted,

By: s/Michael Hodgson

Mike Hodgson                      KS #21331

Michael F. Brady                KS #18630

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**ATTORNEYS FOR PLAINTIFFS**